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What do we know about the well-being of claimants in compensation processes?

Nieke Elbers, Arno Akkermans, Pim Cuijpers & David Bruinvels

Introduction

For some time now, there has been discussion among lawyers in the Netherlands about the position of personal injury victims in liability law. Questions have been raised as to how victims experience the compensation procedure. Several aspects have been criticised, such as the role of lawyers and insurance companies. A study done by Stichting De Ombudsman showed that lawyers sometimes forget to inform the claimant, do not explain the procedure, are slow to do their work, or are not competent to deal with the matter. Insurance company representatives were found to portray claimants as liars, to decline requests for advances, and to adopt a rude attitude towards claimants.¹ Additionally, a study commissioned by the Dutch Ministry of Justice demonstrated that there is an exclusive focus on financial compensation rather than on victims' non-material needs.² Victims want, for example, to be acknowledged and to be taken seriously. They also want to know precisely what happened and to obtain justice. However, legal professionals often do not take time to deal with these aspects. This was considered to be particularly striking because in the field of personal injury the law holds that recovery takes precedence over compensation.³ Finally, in his study Weterings observed that claims settlement processes are often both lengthy and costly, which is frustrating claimants and impeding recovery.⁴

In general, the studies above concluded that a lengthy compensation process and the attitude of lawyers and insurance companies are not beneficial to claimants' health. This conclusion was based on mostly qualitative data and quite biased research samples, so no conclusions could be drawn about whether this negative effect is experienced by only dissatisfied claimants or that it is an extensive problem affecting the overall claimant population. If the latter is the case, this could mean that the current way of handling claims is a serious threat for public health, which would imply that legal professionals inevitably need to think about improving it. Therefore, it is important to investigate the quantitative research on the association between being involved in a compensation process and health, measuring the extent to which the compensation process has an effect on health of

1 Stichting De Ombudsman 2003.

2 Huver et al. 2007.

3 Akkermans 2009.

4 Weterings 1999.

claimants in general.⁵ This article provides an overview,⁶ discussing three main themes: (1) Is being involved in a compensation process bad for health? (2) What is causing the negative compensation effect? And (3) How can claimants' well-being be improved?

Is being involved in a compensation process harmful for health?

A number of empirical studies have investigated whether being involved in compensation processes has a negative effect on people's well-being.⁷ This was often done by comparing a group of individuals who were involved in compensation processes and a group of individuals *not* involved in these processes. Many of these studies have been grouped and summarised in systematic reviews.⁸ Many of these reviews concluded that being involved in a compensation process is bad for health.

Recently, eleven reviews were grouped and summarised in a systematic meta-review.⁹ Nine of them reported an association between compensation and poor health outcomes. However, the authors concluded that only one review was conducted properly, and that particular one found strong evidence for *no* association between litigation and poor health. These, and several other researchers, pointed to significant limitations in studies, an observation which may temper conclusions about compensation and health.¹⁰ One criticism, for example, is that studies measure 'the effect of compensation processes', without accurately describing what the compensation process entails. Health researchers plainly describe compensation schemes in rough categories as being tort, no-fault, workers compensation, common law, or litigation. However, tort can be partly no-fault, and no-fault compensation schemes can apply different time limits, monetary thresholds, and injury severity thresholds.¹¹ Workers compensation is generally no-fault but the implications of the system can be very different between countries. Common law procedures rely on general tort law but in some countries some aspects have been changed because of tort reform legislation. And 'litigation' can refer to all kinds of disputes.¹² Sometimes, the wrong compensation label is used, e.g. confusing litigation with compensation,¹³ and considering lawyer involvement to be similar to being involved in compensation.¹⁴ A more accurate description of the compensa-

5 Compensation processes include both litigation and non-litigation procedures, both fault-based and no-fault (workers) compensation schemes.

6 Methodological justification: Several studies were found after conducting a systematic review about the effect of compensation on mental health; the majority were collected by snowballing. As the overview includes several systematic reviews, it is hypothesised to be fairly robust.

7 E.g. Gabbe et al. 2007; Littleton et al. 2010.

8 E.g. Binder & Rohling 1996; Harris et al. 2005.

9 Spearing & Connelly 2010.

10 Carroll et al. 2011; Grant & Studdert 2009.

11 Cameron & Gabbe 2009; Carroll et al. 2011.

12 Carroll et al. 2011.

13 Carroll et al. 2011; Grant & Studdert 2009.

14 Blanchard et al. 1998.

tion scheme and the actual procedure claimants are subjected to is needed to understand 'the compensation effect'. Additionally, another criticism that follows on from the variety in compensation processes is that the results based on one compensation scheme may not apply fully to countries with another compensation scheme, so researchers often question the generalisability of study results.

Another limitation of the compensation and health studies under discussion is the fact that researchers use an observational study design. It does not become clear whether a difference between claimants and non-claimants is caused by being involved in the compensation process or by other differences that have not been investigated. To draw conclusions about the effect of being involved in a compensation process, randomised controlled trials (RCTs) are required.¹⁵ However, allocating injured people randomly to either a compensation or a non-compensation condition would be unethical and legally impossible.¹⁶ Another limitation is that studies sometimes use indirect outcome measures as proxies for health outcomes, such as time-to-claim closure.¹⁷ Overall, we conclude that there is a lot of evidence that shows that claimants involved in compensation processes have poorer health outcomes than injured non-claimants, but that it should be noted that this evidence is based on research that has limitations. This should be kept in mind and may bias the findings.

What is causing the negative compensation effect?

In contrast to the large number of studies investigating the effect of compensation on health, the question as to what is causing this negative compensation effect has received far less attention.¹⁸ This article takes stock of the empirical evidence as to what particular claim factors, which professionals, and what individual, injury-related or accident-related characteristics have an effect on the claimants' health.

Claim factors

In compensation and health literature, several claim factors affecting claimants' health are examined. First, health researchers often hypothesised that fault-based compensation schemes (i.e. based on tort law) are more adversarial than no-fault schemes; so claimants who are involved in fault-based compensation schemes are expected to be worse off than those in no-fault compensation schemes. This hypothesis seems to be confirmed by two studies showing that a legislative change from fault (tort) to no-fault resulted in fewer whiplash complaints.¹⁹ However, these studies do not give unambiguous support for removal of 'fault', because it could also be that the removal of financial compensation for pain and

15 Grant & Studdert 2009.

16 Carroll et al. 2011.

17 Spearing & Connelly 2010.

18 The Royal Australasian College of Physicians 2001.

19 Cameron et al. 2008; Cassidy et al. 2000.

suffering reduced the reported symptoms. In addition, another study did not show a health difference between claimants involved in a (predominantly) no-fault compensation scheme and those involved in a fault-based scheme.²⁰ As the evidence is not only ambiguous but also conflicting, no conclusion can be drawn about whether no-fault schemes are better for the claimants' well-being than fault-based tort.

A related claim factor that was thought to have an effect on health is whether claimants are involved in litigation/court procedure or in an out-of-court compensation process. Again, studies show conflicting results. One study showed that people who were involved in litigation processes were more traumatised than those in out-of-court settlements.²¹ A meta-analysis analysing 211 studies, however, did not show a health difference between claimants in litigation procedures and those involved in out-of-court settlements.²²

Comparable to what Weterings observed in his study,²³ empirical researchers also suggest that the length of time involved in a compensation procedure is a factor influencing well-being.²⁴ However, we only found one study that showed that being involved in a compensation process of longer than one year increased the trauma.²⁵ In contrast, a meta-analysis of 211 studies did not find an effect of length of time on health,²⁶ so the evidence that claim duration has *no* impact on health seems to be much stronger.

Furthermore, it is hypothesised that lump sum and periodical payments may have a different influence on claimants' recovery.²⁷ To our knowledge, only one study investigated whether lump sum or intermittent payments had a different effect on the claimants' health and found that claimants who received lump sum payments reported greater psychological disturbance and more unemployment than those who were paid intermittently.²⁸ The authors of this study did not explain this effect, but maybe the intermittent payments relieved the financial insecurity that some claimants have to deal with. Again, more research is needed.

A final topic in compensation and health studies is the frequent suggestion that a claim settlement can 'cure' the victim,²⁹ implying that once claimants receive their compensation, they miraculously recover from their injury. Regardless of whether this reasoning is correct, studies found contradictory evidence, as some studies showed that people with settled claims reported better health compared

20 Greenough & Fraser 1989.

21 Cotti et al. 2004.

22 Harris et al. 2005.

23 Weterings 1999.

24 Shuman 2000.

25 Cotti et al. 2004.

26 Harris et al. 2005.

27 Grant & Studdert 2009.

28 Greenough & Fraser 1989.

29 Miller 1961.

to those with pending claims,³⁰ whereas other studies did not show a correlation between claim settlement and mental health or recovery.³¹ In conclusion, more research is needed to draw conclusions on what particular claim factors are responsible for decreased well-being.

Professionals

Empirical studies also suggested that professionals may have a negative effect on the claimants' well-being. Generally, the literature addresses three categories of professionals: insurance company representatives, medical experts and lawyers. Insurance company representatives are said to have an adversarial attitude towards claimants.³² Also the fact that they sometimes delay the payment of funds is suggested to be harmful for claimants' well-being.³³ Medical experts were accused of reinforcing the sick role and exacerbating the trauma by over-investigating patients.³⁴ However, quantitative studies investigating the effect of the attitude of insurance representatives and the involvement of medical experts on claimants' health have not yet been conducted.

In contrast, the association between lawyer involvement and claimants' health has been explored in quantitative studies several times. Several studies³⁵ found that lawyer involvement is negatively associated with claimants' well-being. There was one exception to this.³⁶ However, the true explanation as to why lawyers seem to be 'bad for health' has not been assessed yet. Some researchers hypothesised that claimants who engage a lawyer probably also have more severe injuries or more problematic claims.³⁷ However, studies that controlled for injury severity still found a negative effect.³⁸ Others suggested that lawyers implicitly encouraged their clients to maintain sickness behaviour.³⁹ Still others suggested that lawyers inflicted emotional harm on clients by communicating poorly,⁴⁰ or that they did not sufficiently take into account their clients' emotions and non-material needs.⁴¹ More research is needed to investigate the cause of this negative relationship.

Individual, injury-related, or accident-related characteristics

Perhaps health differences have nothing to do with the compensation process? Could it be that claimants just have different individual, injury-related, or acci-

30 Guest & Drummond 1992; Miller 1961.

31 Blanchard et al. 1998; Mendelson 1995.

32 O'Donnell et al. 2010.

33 Blanchard et al. 1998; Ehlers et al. 1998.

34 Harris 2007; Lippel 2007; Littleton et al. 2010; Murgatroyd et al. 2011; Fulcher 2004.

35 Gun et al. 2005; Harris et al. 2009.

36 Casey et al. 2011.

37 Dichraff 1993.

38 Harris et al. 2008.

39 Aurbach 2011.

40 Schatman 2009.

41 Akkermans 2009.

dent-related characteristics to those of non-claimants, so that these other factors explain the health difference?

Individual characteristics

It could be that claimants have more pre-injury psychopathology or psychological vulnerability than non-claimants.⁴² However, several studies did not show such differences,⁴³ and one even found that claimants had *less* psychopathology than non-claimants.⁴⁴ Another hypothesis is that claimants and non-claimants may differ in the way they deal with problems and stress (*coping style*).⁴⁵ However, the coping style that is associated with poorer well-being and slower recovery is a palliative or avoidance coping style,⁴⁶ whereas claimants are often associated with a rather active or decisive coping style.⁴⁷

What about age, gender, and education differences between claimants and non-claimants that may explain the health difference? Age, for example, is negatively associated with health. Maybe people who lodge a claim are older than injured people who do not lodge a claim, so age would explain the health difference between claimants and non-claimants rather than the compensation process itself. However, studies did not show age differences between claimants and non-claimants.⁴⁸ We moreover found some studies reporting that claimants were *younger* than non-claimants.⁴⁹ The same story goes for gender: women generally show higher illness morbidity and longer impairment than men. Maybe women tend to claim more often than men, which could explain health differences between claimants and non-claimants. However, again the compensation studies that we investigated did not report significant differences.⁵⁰ Finally, we checked whether studies reported education differences, as higher education is associated with better health. It could be that people with higher levels of education tend to refrain from lodging a claim. Indeed, some studies found that claimants were those with lower levels of education compared to non-claimants.⁵¹ However, other studies did not report differences in education level.⁵² Based on the literature that we studied, no conclusion can be drawn about the effect of education.

Injury characteristics

It is often suggested that claimants probably have more severe injuries than people who do not claim, which may explain why claimants report poorer health than injured non-claimants. Indeed, there is one study that showed that injured people

42 E.g. Littleton et al. 2010.

43 Benight et al. 2008; Gabbe et al. 2007.

44 O'Donnell et al. 2010.

45 Wayte et al. 2002.

46 Bryant & Harvey 1995; Buitenhuis et al. 2003.

47 Benight et al. 2008.

48 Benight et al. 2008; Blanchard et al. 1998; Bryant & Harvey 2003; Littleton et al. 2010

49 Gabbe et al. 2007; O'Donnell et al. 2010; Suter 2002.

50 Benight et al. 2008; Gabbe et al. 2007; Littleton et al. 2010; O'Donnell et al. 2010.

51 Benight et al. 2008; O'Donnell et al. 2010.

52 Gabbe et al. 2007; Littleton et al. 2010; Suter 2002.

who were involved in compensation processes suffered from more severe injuries than those who did not claim compensation.⁵³ However, two studies found the opposite, i.e. that the compensation effect was associated with mild injuries rather than severe complaints.⁵⁴ Several other studies did not show severity of injury differences between groups.⁵⁵ This means that there does not seem to be support for injury severity explaining poorer health.

Claim managers often seem to assume that claimants with whiplash injuries recover less well than claimants with other injuries. Remarkably, we found only one empirical study that compared the health of claimants with whiplash to those with orthopaedic injury. This study showed that claimants with whiplash injuries reported similar psychological complaints but more pain than those with orthopaedic injury.⁵⁶ The question is whether whiplash claimants are more likely to claim compensation. There is one study that investigated a group of people with whiplash injuries and asked them whether they were claiming compensation: 55% of the sample claimed, 45% did not.⁵⁷ Furthermore, Dutch insurance companies report that about 32% of their claimants have whiplash injuries, which is quite high, but more studies are needed to investigate whether whiplash injury explains the health difference between claimants and non-claimants.

Accident characteristics

Could it be that claimants experienced more severe accidents than non-claimants, as more severe accidents are probably associated with more severe injury and thus poorer health? There were two studies that found that claimants were more often injured in road accidents, whereas those who did not claim were predominantly injured in falls.⁵⁸ However, the compensation effect was also present in samples of motor vehicle accidents only,⁵⁹ which suggests that accident trauma cannot be a predominant explanation.

A final hypothesis is that claimants experience more blame towards the offender, and blame is associated with stress and anger, so blame could explain why claimants show poorer well-being than non-claimants.⁶⁰ However, only one study showed the association between responsibility for the accident and being involved in litigation, and it appears that claimants in litigation and those not involved in litigation equally often consider the other to be responsible.⁶¹

53 Suter 2002.

54 Binder & Rohling 1996; Sterling et al. 2010.

55 Blanchard et al. 1998; Bryant & Harvey 2003; Littleton et al. 2010; O'Donnell et al. 2010.

56 Mayou & Bryant 2002.

57 Sterling et al. 2010.

58 Gabbe et al. 2007; O'Donnell et al. 2010.

59 Blanchard et al. 1998; Bryant & Harvey 2003; Littleton et al. 2010.

60 Littleton et al. 2010.

61 Benight et al. 2008.

How to improve claimants' well-being?

The fact that little is known about what is causing the negative effect of being involved in compensation processes on health has not discouraged initiatives to enhance claimants' satisfaction and health outcomes. Some evidence was found that more client-friendly claims settlement could improve claimants' well-being.

Client-friendly claims settlement

There are two studies concerning insurance companies that changed their ways of claims settlement, improving claimants' well-being and satisfaction. One insurance company in New South Wales, Australia, applied a new claims settlement approach, which consisted of a variety of changes such as following a consistent communication protocol, risk screening, psychological screening, prompt approval of treatments, proactively resolving disputes, and facilitating early return to work. The new approach was found to reduce depression and to improve return to normal activities, compared to the usual claim handling.⁶² Another initiative was undertaken by a Dutch loss adjusters company, changing the claims handling of people with whiplash injuries. All legal and medical discussions were banned for one year, claimants were supported by case managers, got access to any treatment they preferred, and all costs were fully compensated by the participating insurance companies. The satisfaction score of the participants in the pilot was 0.5 point higher than the average satisfaction score in regular cases (which was 7.3 on a scale from 1 to 10).⁶³

Lawyers have also probably tried to improve their way of claims settlement in order to enhance their clients' health, although these initiatives have not been quantitatively investigated, at least not to our knowledge. Nevertheless, several articles about lawyer-client interaction suggested that improving psychosocial skills could improve claimant satisfaction. For instance, it was argued that lawyers should focus on identifying aspects of legal procedures that may lead to anxiety, distress and depression.⁶⁴ Other articles suggested that lawyers should improve their interpersonal, listening, interviewing, and counselling skills,⁶⁵ and that they should involve the client in decision-making in order to enhance client satisfaction.⁶⁶ It would be interesting to empirically investigate such improvements.

In organisational settings, it was found that increasing procedural fairness, i.e. workers getting the opportunity to express their views and feelings,⁶⁷ being treated with dignity and respect,⁶⁸ and being provided with reasonable, timely, and

62 Schaafsma et al. 2012.

63 Van Driel 2011.

64 Patry et al. 1998.

65 Sternlight & Robbennolt 2008.

66 Binder et al. 1990; Kruse 2006.

67 Thibaut & Walker 1975.

68 Bies & Moag 1986.

specific information and explanations,⁶⁹ was associated with better health.⁷⁰ Possibly improving procedural justice could also enhance well-being in compensation processes. Currently, lawyers and insurance companies are more concerned with determining the compensation amount than focussing on procedural justice. However, this does not seem to be right as research has shown that people consider fair procedures to be more important than fair outcomes.⁷¹ More research is needed to investigate whether enhancing procedural justice in compensation processes would lead to increased well-being among claimants.

Claimant empowerment via e-health

To make claimants less dependent on lawyers and insurance companies, we propose an additional, innovative way to improve the well-being of claimants in compensation processes: claimant empowerment via e-health interventions. Empowerment is a well-known tool in health care. Empowerment interventions have already been developed for a wide variety of physical (e.g. arthritis, cancer, diabetes) and mental health problems (e.g. post-traumatic stress, depression, anxiety). The methodologies of the interventions differ widely, but a lot of them provide information and cognitive behavioural therapy, challenging dysfunctional cognitions and behavioural patterns related to the health problem.

Nowadays, empowerment interventions are increasingly offered via the internet, called *e-health* interventions.⁷² They may even have several advantages over face-to-face interventions: they are anonymous, the costs are low, and they can be consulted at any time and any place.⁷³ Furthermore, they are particularly suitable for mild symptoms.⁷⁴ Although e-health interventions also have some problematic issues, such as a high drop-out rate of participants and a need for some interaction to be effective, they are expected to become a part of regular health care in the future.⁷⁵

E-health interventions may help claimants who are involved in compensation processes. Claimants could benefit from an independent, online intervention providing information about the various steps and possible difficulties in the claims settlement process. Furthermore, claimants could also benefit from cognitive behavioural techniques, teaching how to recognise and tackle negative and irrational thoughts, how to communicate effectively with lawyers and insurance companies, and how to cope with inevitable, unpleasant aspects such as proving liability and causation. Further research is needed to investigate whether claimants in compensation processes may benefit from e-health interventions.

69 Colquitt 2001; Shapiro et al. 1994.

70 Ybema & van den Bos 2010.

71 Thibaut & Walker 1975.

72 Carlbring et al. 2005; Kaltenthaler et al. 2006.

73 Griffiths et al. 2006.

74 Andersson & Cuijpers 2008.

75 Andersson & Cuijpers 2008.

Conclusion

What does the empirical literature tell us about the well-being of claimants in compensation processes? It can be concluded that injured claimants in general recover less well than injured people who do not claim compensation. However, we should be careful in generalising the study results across jurisdictions because of the variety of compensation schemes across the world, and we should also be cautious about drawing causal conclusions because the observational study designs do not permit that.

No conclusion can be drawn about whether certain claim factors can explain the association between compensation processes and health. Although some studies found that fault-based compensation schemes, litigation, duration, lump sum payments, and claim settlement have a negative effect on claimants' health, there are also other studies that either found no association or showed contrasting evidence. Nothing can be said about the effect of the attitude of insurance companies as no empirical research has been conducted about the matter. The same applies to the hypothesis that medical experts and numerous medical assessments hinder claimant recovery as only one qualitative study showed an association, which is too limited to be able to make a judgement. Lawyer engagement, in contrast, is a factor that has been well investigated and was found to have a negative influence on the health of claimants, but further research is needed to explain why. Conflicting evidence was found regarding a possible confounding effect of certain non-claim characteristics on well-being, such as previous psychopathology, coping style, age, gender, education, injury severity, type of injury, accident trauma, and the extent of blame. Once again no conclusion could be drawn based on the empirical studies done so far.

Finally, we conclude that it is possible to improve claimants' well-being by applying a different way of claims settlement, as was shown by two insurance companies. Some articles suggested that lawyers can also improve their clients' recovery by improving their way of claim handling, but the effectiveness of such change has not been empirically investigated yet. We propose empowering claimants via evidence based e-health interventions, but further research is needed to investigate whether this method is also effective in improving claimants' well-being.

More research is needed to be able to find what is causing the compensation process to have a negative effect on claimants' health, and more initiatives need to be undertaken to improve the situation. It appears to be both necessary and possible to make compensation procedures more beneficial for clients in terms of physical health outcomes, psychological well-being and perceived justice, so it is obvious that we need to do something. The health of a large number of people is at stake.

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